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SUBJECT: LEBANON TRIBUNAL: MANAGEMENT COMMITTEE ADOPTS  
TERMS OF REFERENCE

REF: A. THE HAGUE 204

- [1](#)B. USUN 153
- [1](#)C. IO/USUN EMAIL (WILCOX/REINEMEYER)-02/29/08
- [1](#)D. IO/USUN EMAIL (WILCOX/REINEMEYER)-03/03/08
- [1](#)E. USUN 171

[1](#)1. (SBU) BEGIN SUMMARY. UN Legal Counsel Michel advised the Management Committee for the Special Tribunal for Lebanon on February 29 that the UN has not received any new contributions to the Tribunal since Saudi Arabia provided \$5 million earlier in the month. Although the UN has not received written confirmations, it has heard that at least two other Arab states (i.e., Kuwait and the UAE) intend to make anonymous contributions. Michel also said the Secretary-General has selected the Registrar and plans to

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brief the Council this month on the Tribunal. The Committee also adopted its Terms of Reference, discussed the proposed terms and conditions of service for the Tribunal's judges, and discussed the UN's cost estimates (\$13.5 million) for building a courtroom and otherwise refurbishing the building the Tribunal will occupy in the Netherlands. END SUMMARY.

Timing of the Tribunal  
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[1](#)2. (SBU) At the first formal meeting of the Management Committee for the Special Tribunal for Lebanon, UN Legal Counsel Michel briefed members on the UN's efforts to bring the Tribunal into being. Although the UN is repeatedly asked when the Tribunal will start functioning, that question is not the right one, Michel said. What will happen, he said, is that (1) the Tribunal's Registrar will assume duties and set up the Tribunal's administrative structure, and then (2) the Prosecutor will take office, accompanied, if not immediately, by the pre-trial judge and then the judges, who will be paid on an as-employed basis.

[1](#)3. (SBU) Even so, The Tribunal will not be ready to hold trials for quite some time -- perhaps one year, Michel said. For instance, the Prosecutor does not have independent authority to issue indictments, so even once the Prosecutor has materials ready, the pre-trial judge will need to review them before deciding whether to issue indictments. Michel also stressed that the timeline depends on the progress of the UN International Independent Investigation Commission (UNIIIC) and said he hoped that its Commissioner Bellemare would provide greater clarity on the status of the investigation when he reports to the Security Council later this month.

## Registrar

14. (SBU) The process of appointing the Registrar is "near completion," Michel said, but because the appointment marks such a significant milestone, the UN is still considering when and how to announce it. Michel sought views on whether, in announcing the Registrar's appointment, the UN also should say when the Registrar would assume his duties, and he proposed April 1 or May 1 as possible dates. The Dutch and USUN both stressed the need to appoint the Registrar without delay, particularly because work on the Tribunal building cannot begin until a Registrar is in place (ref A). Comment: USUN understands that the selection panel recommended a highly qualified candidate for this position. End Comment.

## Contributions

15. (SBU) The UN has not received any new contributions to the Tribunal since February 13, when Saudi Arabia deposited \$5 million, Michel said (ref B). The UN has received indications from third parties that two Arab states (i.e., the UAE and Kuwait) will contribute, these states have not informed the UN, nor have they made their contributions.

## Building

16. (SBU) OLA consultant Robin Vincent and Phil Mitnick, an architect from the International Criminal Tribunal for Yugoslavia who is providing guidance on the plans to refurbish the building the Tribunal will occupy, briefed the Committee on the current cost estimate (\$13.5 million). A detailed cost breakdown was circulated and provided to IO (ref C). Costs are estimated at \$1.5 million for building a courtroom, \$1.1 million for building ten holding cells, and \$2.1 million for installing information technology in the courtroom. Security-related improvements, such as installing blast-proof film on the windows, installing close-circuit televisions and upgrading the building's access control system, will cost approximately \$5 million, while mandatory fire safety improvements will cost \$2.8 million. The budget also includes just under \$1 million for office refurbishment to cover general maintenance-related costs. Although the cost estimates are not based on actual designs, Mitnick said he is confident that the figures are sound and sufficiently reflect possible contingencies. The estimates also include the estimated cost of overhead for contractors as well as the standard charge assessed by the Dutch government's building agency (RGD), which is managing the project. The Committee did not reach a decision on the proposed construction package, however, because several members wanted to wait until their representatives have had a chance to tour the Tribunal building, which Vincent hopes to arrange this week. Note: After the meeting, USUN learned that Germany and France plan to send budgetary and construction experts to The Hague to tour the facility and consider the current construction proposal first-hand. End Note.

17. (SBU) In response to USUN's questions, Mitnick explained that the proposed courtroom information technology package, estimated at \$2.1 million, is intended to increase the efficiency and transparency of the Tribunal's proceedings. USUN has emailed a detailed breakdown to IO (ref D). Among other things, the technology would permit simultaneous translation in the three languages of the Tribunal (with reserve capacity for a fourth language if a witness or defendant does not speak one of the Tribunal's official languages). The visitors' gallery would be equipped with headphones to allow the public to listen to proceedings in the Tribunal's three languages. Twenty-five percent of the costs would cover "e-court" technology, which will allow the Tribunal to save audiovisual material into a digital format, facilitating the preparation of archives for the Tribunal and allowing the Tribunal to post proceedings on the Tribunal's

website through streaming audio/video feeds. The package also has features to enhance witness protection, such as by distorting witnesses' voices and faces and by permitting witnesses to testify from off-site. It also can facilitate discovery by allowing electronic transmission of documents to the defense. The proposed package is more sophisticated than the one the Special Court for Sierra Leone currently uses, Vincent said, but reflects the latest developments in courtroom technology and addresses many of the gaps in previous tribunals' technology systems.

¶8. (SBU) As far as when the building can be occupied, Vincent said the Dutch security services have advised that, with four to five weeks' advance notice, a small advance team could use the building as long as internal security is in place. Internal security guards from the ICTY can provide that security, on a full-cost reimbursement basis, with one month's notice, Vincent said. The Dutch also said the process for getting a permit and building a security fence for the building could be condensed from 13 to four weeks.

¶9. (SBU) In response to Committee members' questions, Vincent and Mitnick clarified that, at least until the end of 2009, the Tribunal could not save costs by using the ICTY's courtroom space. The ICTY is running eight trials in three courtrooms and operating at full capacity. If a suspect or suspects are arrested before the Tribunal building is ready, however, the ICTY or the International Criminal Court could make space available to permit the defendant to make an early appearance, they clarified. Vincent and Mitnick also clarified that it would not be feasible to use the ICTY's holding cells because the ICTY is several miles away from the Tribunal building.

#### Detention Facility Available

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¶10. (SBU) In response to USUN, Vincent confirmed that the Dutch government will allow the Tribunal to use the Scheveningham detention facility, where the ICTY and the International Criminal Court (ICC) currently house defendants. Cells for six detainees could be made available within four to six weeks if necessary, and the detention facility will have an entire wing available by the beginning of 2009. The UN anticipates that the Dutch government will charge the Tribunal the same rate as the ICTY and the ICC pay (roughly 215-220 Euros per cell per day); that rate would include the costs of any renovations needed to accommodate defendants before the Tribunal.

#### Terms and Conditions of Service for Judges

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¶11. (SBU) The Committee also discussed whether the judges should receive a salary of \$170,080 per year (as the judges on the Special Court for Sierra Leone do) or \$136,130 per year, which tracks the revised annual salary system established by GA resolution 61/262 (2005), applicable to permanent judges of the International Court of Justice and ICTY who will begin new terms of office after January 1, 2007 (ref D). Including costs associated with the post adjustment, the option resembling the Sierra Leone model would cost the Tribunal \$254,675 per judge; the option following GA resolution 61/262 would amount to \$220,939 per year. Most Committee members (in particular Germany and France) favored the second (less costly) option. Lebanon indicated it preferred the first option but could live with the second one. The Committee will make a final decision on the proposal this week; unless otherwise instructed, USUN will join other Committee members in supporting the less costly option, although it should be noted that the judges, who had been told that they would receive compensation along the lines of the judges on the Special Court for Sierra Leone, "with appropriate modifications," may be dissatisfied with the lower figure. Comment: ICJ salaries are currently being considered by the Fifth Committee. End Comment.

## SYG's Report to the Council

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¶12. (SBU) Michel said OLA has sent the SYG a draft progress report to the Security Council on the Tribunal. Although the SYG will decide when to transmit the report, OLA thinks he should do so in the next two weeks, to provide Council members sufficient time to review it. The Council could be briefed on the report at the same time as Bellemare briefs the Council on his report.

## Transfer of Funds to Tribunal Account

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¶13. (SBU) Committee members also discussed how contributions can be transferred from the UN Trust Fund for the Tribunal to the separate Tribunal account that the Registrar will open once he has been selected. The UN will look into whether the separate account to be set up for the Tribunal can use the same Terms of Reference as the UN Trust Fund to which states have made contributions, as some donors have requested.

## Next Meeting

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¶14. (SBU) The Committee will meet on March 6 to decide upon the terms and conditions of service for the judges as well as staff. Because Dutch law requires that all persons employed in the Netherlands must have health insurance and long-term care, long-term illness insurance, partial and total disability benefits, survivor's benefits, and pension benefits, the Management Committee must approve a package that provides such benefits to Tribunal staff. As Vincent explained to the Committee on February 21 (ref E), the UN is proposing to meet the Dutch social security requirements for staff by having the Tribunal join the UN Staff Pension Fund. Although doing so would increase staff costs by about 16 percent for the duration of the Tribunal's operations, Vincent stressed that contracting with an outside organization to provide benefits would also entail costs. Because the UN assumes that the judges will have pension coverage from their current employers, the UN's proposed terms and conditions of service for judges state that the Tribunal will not contribute to any pension plan on behalf of a judge unless otherwise determined on a case-by-case basis. Note: USUN will follow up with OLA to determine whether, under the UN's headquarters agreement with the Netherlands, some key Tribunal staff will receive diplomatic privileges and immunities in the Netherlands and thus may not be subject to the Dutch social security law. End Note.

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